

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company

**Reconciliation of revenues collected
under Rider EDA with the actual
costs associated with energy
efficiency and demand response
programs.**

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Docket No. 10-0537

REPLY BRIEF ON EXCEPTIONS OF THE STAFF
OF THE ILLINOIS COMMERCE COMMISSION

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Staff of the Illinois Commerce Commission (“Staff”), by and through its counsel, pursuant to Section 200.830 of the Rules of Practice (83 Ill. Adm. Code 200.830) of the Illinois Commerce Commission (“Commission”), respectfully submits its Reply Brief on Exceptions (“RBOE”) in the above-captioned matter.

I. INTRODUCTION

The Administrative Law Judge’s (“ALJ”) proposed order (“PO”) was issued following conclusion of the evidentiary hearing held on May 10, 2012 and the filing of initial and reply briefs by Staff and Commonwealth Edison Company (“ComEd”). Brief on Exceptions (“BOE”) were filed by Staff and ComEd on July 25, 2012. ComEd takes exception to the well reasoned PO, arguing that the ALJ ignores uncontested evidence

(ComEd BOE, p. 1) and that a standard requiring ComEd to show how its incentive compensation costs relate to energy efficiency or how incentive compensation costs paid under the Annual Incentive Program (“AIP”) has been tailored for ComEd’s employees is unrelated to the customer benefits standard. (Id.) Putting aside the issue of whether Staff’s adjustment should be adopted by the Commission, ComEd further argues that at most the adjustment should be limited to \$96,000 because according to ComEd only approximately \$96,000 for incentive compensation was passed through Rider EDA. (Id., p. 3) ComEd also proposes language with respect to Staff witness Hinman’s proposals regarding the annual reporting of budget to actual comparisons. (Id., p. 16)

The Company’s arguments have been previously addressed by Staff in its initial brief, reply brief and brief on exceptions. For the reasons set forth in the PO, the ALJ appropriately adopted Staff witness Tolsdorf’s incentive compensation adjustment. The Company’s arguments and exceptions against Mr. Tolsdorf’s incentive compensation adjustment and Staff witness Hinnman’s recommendations should be rejected. Staff in this RBOE addresses the Company’s BOE arguments below.

II. ARGUMENT

A. AIP Incentive Compensation Adjustment

The Company’s arguments against the PO’s acceptance of Staff witness Tolsdorf’s AIP incentive compensation adjustment ignore significant key provisions in the Company’s AIP, Section 8-103 of the Public Utilities Act (“PUA” or “Act”) (220 ILCS 5/8-103), the provisions contained in ComEd’s Rider EDA and prior case law. ComEd alleges that its incentive compensation costs unquestionably relate to energy efficiency

("EE") and that to claim otherwise requires reliance on the unsupportable assumption that the benefits of exceeding Plan Year 2 energy savings goals were realized independent of the AIP and the specific goals of EE employees. (ComEd BOE, p. 9) ComEd's argument should be rejected for a number of reasons.

ComEd's argument is fundamentally flawed. ComEd's argument ignores key provisions in the AIP. As Staff discussed in its initial brief the amount of EE incentive compensation paid under the AIP is barely related to ComEd's incremental EE employees' efforts. (Staff IB, p. 14) ComEd ignores the fact that the incentive compensation amount paid to incremental EE employees in 2009 had no relationship at all to energy efficiency performance and for 2010 at most two percent of the total incentive compensation paid related to EE performance. (Id., pp. 14-15) As Staff discussed in its initial brief, under the Company's AIP plan the base amount of incentive compensation paid to EE employees subject to the AIP Plan is the result of goal weights and KPI Performance pay out percentages. The product of these percentages results in a Preliminary weighted pay out percentage. The weighted pay out percentage is then applied to an eligible salary amount. Eighty-five percent of the goal weights in the AIP Plan relate to ComEd's: (1) O&M expense, (2) capital expenditures, (3) SAIFI, (4) CAIDI, OSHA recordable rate, and (5) and customer satisfaction. None of those goal weights relate to EE let alone EE activities and programs approved in ComEd's plan. The other fifteen percent is related to Focused Initiatives and Environmental Index. (Staff Cross Ex. 2.0, p. 1) However, for 2009 none of the Focused Initiatives and Environmental Index related to energy efficiency (Tr., May 10, 2012, p. 15) and for 2010 only 2 of the 13 Focused Initiatives and Environmental Index related to energy efficiency. (Id., p. 18) The significance of which was addressed by Mr. Tolsdorf when

he testified on redirect, that for the 2010 AIP Plan the impact of energy efficiency performance on incentive compensation is at most 2% of the total incentive compensation paid. (Id., p. 58; Staff Cross Ex. 2, p. 10) Stated another way, ninety-eight percent of incentive compensation amount paid to incremental EE employees has nothing to do with EE. (Id.) As a result, the efforts of the incremental EE employees have very little to do with the incentive compensation which the Company seeks to recover from ratepayers through Rider EDA. This is further buttressed by the testimony of Company witness Fruehe who admitted on cross examination that EE employees do not do Underground Cable Program work, Substation Transformer Maintenance Work and Vegetation Management for Distribution and Transmission work, which compose some of the other eleven Focused Initiatives and Environmental Index upon which incentive compensation is based. (Tr., May 10, 2012, pp. 17-18) Because the AIP EE incentive compensation amount is not tailored to EE and demand response measures approved in ComEd's EE Plan that are ultimately implemented by ComEd for which ComEd seeks cost recovery through Rider EDA, ComEd is unable to meet the customer benefit standard set forth in past Commission orders.

The PO appropriately recognizes that the Commission has a long history of requiring a showing of benefit to ratepayers in order to recover incentive compensation costs. (PO, p. 24) A customer benefit standard has been applied by the Commission to ComEd at least as far back as ComEd's 2001 rate case, Docket No. 01-0423. The Appellate Court noted the past Commission precedent on the issue of incentive compensation cost recovery and applied the same standard in the appeal of ComEd's 2005 rate case where the Appellate Court stated "there is ample precedent making a benefit to ratepayers a condition upon which the recovery of salary-related expense

depends.” (Commonwealth Edison Company v. Illinois Commerce Commission, 398 Ill. App. 3d, 510, 517 (2009)) The customer benefit standard was used most recently in ComEd’s recent rate case, Docket No. 10-0467 (“The Commission has a long-standing policy of allowing Incentive Compensation costs when those costs benefit ratepayers ...” (Order, May 24, 2011, Docket No. 10-0467, p. 65). And, the Commission applied the same customer benefit standard in ComEd’s 2007 rate case, Docket No. 07-0566. (“The utility can recover its expenses when it can prove that the expenses are reasonable, related to utility service, and of benefit to ratepayers or utility service.” (Order, September 10, 2008, Docket No. 07-0566, p. 61) (Emphasis added) Finally, in the Commission’s original order for ComEd’s 2005 rate case, Docket No. 05-0597, which as previously noted was upheld on appeal by the Appellate Court, the same customer benefit standard was applied by the Commission. In that order, the Commission directly addressed the standard for incentive compensation costs to be recovered. The Commission stated that:

All parties appear to agree on the standards the Commission should employ when deciding whether to allow a company to recover the cost of its incentive compensation program. In ComEd’s previous rate case, Docket 01-0423, we stated that such expenses should be recovered if the incentive compensation plan has ‘reduced expenses and created greater efficiencies in operations’ and thus, it ‘can reasonably be expected to provide net benefits to ratepayers.

(Original Order, July 26, 2006, Docket No. 05-0597, p. 95) ComEd agrees with this standard (ComEd BOE, p. 5), but misapplies it. As discussed above for the reasons previously stated, because the AIP EE incentive compensation amount is not tailored to EE and demand response measures approved in ComEd’s EE Plan, ComEd fails to meet the standard.

Under Rider EDA, ComEd is only allowed to recover through the rider incremental costs that are incurred by ComEd in association with EE and Demand Response Measures. (Commonwealth Edison Company, Rider EDA, Original Sheet No. 245)(Staff Motion, Attachment A) EE and Demand Response Measures under the rider means “activities and programs that are developed, implemented, or administered by or for the Company, or the Department of Commerce and Economic Opportunity (DCEO), that are related to energy efficiency and demand response plans approved by the ICC.” (Id.) (Emphasis added) Since as discussed above and as discussed in Staff’s initial brief and reply brief, the amount of EE incentive compensation paid under the AIP is barely related to ComEd’s incremental EE employees’ efforts, the AIP incentive compensation paid to EE employees is not an incremental expense. (Staff IB, p. 12; Staff RB, p. 7) Accordingly, it cannot be recovered through Rider EDA.

While ComEd certainly should be aware of the requirements for cost recovery under its Rider EDA addressed above, it apparently is not. In its BOE, ComEd takes exception to the underlined language below from the PO which states:

This Commission has long required a showing of benefit to ratepayers due to AIP to recover incentive compensation cost. In this Docket, the Company had failed to show how the incentive cost it sought to recover relate to energy efficiency or how the AIP had been tailored for ComEd’s EE employees.

ComEd suggests that the underlined language “appears to be a reference to the Commission’s December 2010 order approving ComEd’s second energy efficiency plan, which was issued well after this docket commenced.” (ComEd BOE, pp. 1 and 6) ComEd goes on to argue that order, Docket No. 10-0570, cannot be applied retroactively. (ComEd BOE, p. 6) ComEd is attempting to create confusion where none exists. As discussed above, under Rider EDA, ComEd is only allowed to recover

incremental costs that are incurred by ComEd in association with EE and Demand Response Measures. (Commonwealth Edison Company, Rider EDA, Original Sheet No. 245)(Staff Motion, Attachment A) EE and Demand Response Measures means “activities and programs that are developed, implemented, or administered by or for the Company, or the Department of Commerce and Economic Opportunity (DCEO), that are related to energy efficiency and demand response plans approved by the ICC.” (Id.) (Emphasis added) Clearly, the PO’s language which ComEd claims is based upon the order from Docket No. 10-0570 is not, but rather arises from the plain requirements of Rider EDA in effect during the reconciliation period. Consistent with the terms of Rider EDA, EE incentive compensation costs have to relate to ComEd’s incremental EE employees’ efforts implementing the EE and demand response plans approved by the Commission. The language from the PO is consistent with that requirement. Accordingly, ComEd’s argument should be disregarded.

ComEd also argues that its EE employees hired to implement its 2008-2010 EE and Demand Response measures have provided the benefits identified by the General Assembly in Section 8-103(a) of the PUA. (ComEd BOE, p. 8) Section 8-103(a) of the PUA provides:

It is the policy of the State that electric utilities are required to use cost-effective energy efficiency and demand-response measures to reduce delivery load. Requiring investment in cost-effective energy efficiency and demand-response measures will reduce direct and indirect costs to consumers by decreasing environmental impacts and by avoiding or delaying the need for new generation, transmission, and distribution infrastructure. It serves the public interest to allow electric utilities to recover costs for reasonably and prudently incurred expenses for energy efficiency and demand-response measures. As used in this Section, "cost-effective" means that the measures satisfy the total resource cost test. The low-income measures described in subsection (f)(4) of this Section shall not be required to meet the total resource cost test. For purposes of this Section, the terms "energy-efficiency", "demand-response", "electric utility", and "total

resource cost test" shall have the meanings set forth in the Illinois Power Agency Act.

(220 ILCS 5/8-103(a)) (Emphasis added) ComEd goes on to argue that the savings under subsection (a) as well as those under subsection (b) are effected in part by the EE employees and that the Commission has confirmed in Docket No. 10-0520, that ComEd exceeded the Plan Year 2 energy savings goals and the savings were achieved at a cost \$16 million below budget. (ComEd BOE, p. 8) ComEd claims that this shows unquestionably that there is evidence in the record that ComEd meets the customer benefits standard. (Id.) Putting aside the fact that the incentive compensation amount paid to incremental EE employees in 2009 has no relationship at all to energy efficiency performance, and in 2010 at most two percent of the total incentive compensation paid is related to energy efficiency performance and therefore none of the incentive compensation paid is an incremental expense recoverable under Rider EDA, Staff disagrees with ComEd's claim that it has demonstrated that the EE and Demand Response measures have provided the benefits identified by the General Assembly in Section 8-103(a). ComEd's argument fails to recognize that Section 8-103(a) requires that the investments in EE and Demand Response are to be cost effective ("[r]equiring investment in cost-effective energy efficiency and demand-response measures"). (220 ILCS 5/8-103(a)) (Emphasis added) Whether ComEd was able to meet the Plan Year 2 energy savings goals and the savings were achieved at a cost \$16 million below the maximum amount allowed in the statute does not mean that customers received net benefits (i.e. investments were cost effective). In order for customers to have benefited the legislature was clear that the investments must be cost-effective (220 ILCS 5/8-103(a)); however, in Docket No. 10-0520, there was no finding that ComEd's investments were cost-effective. A review of the final order in Docket No. 10-0520

shows that cost-effectiveness was not even at issue in the docket. Since cost effectiveness was not addressed in Docket No. 10-0520, ComEd cannot rely upon that order to claim that the EE and Demand Response measures have provided the benefits identified by the General Assembly in Section 8-103(a).

Finally, ComEd argues that in the event the Commission adopts the PO's conclusion to disallow the recovery of incentive compensation paid to EE employees, the amount of the adjustment should be \$96,148.06, not \$262,923¹. (ComEd BOE, pp. 13 and 15) Staff's adjustment removes the approximately \$263,000 paid to the incremental EE employees during Plan Year 2. The calculation of this figure is uncontested. The Company claims, however, in the last hour that only a portion of these costs have been collected through Rider EDA. ("The \$262,923 figure reflects the total incentive compensation costs associated with the EE employees during Plan Year 2, but only \$96,148 of the \$262,923 was charged through Rider EDA.") (ComEd BOE, p. 13) The Company claims that the difference between the \$263,000 and the \$96,000 is due to an allocation process. According to ComEd:

...AIP costs are charged to all ComEd departments via an allocation pool and AIP costs are allocated to each ComEd department based on salaries charged to the department. Therefore, while incentives charged to an individual department will be materially correct, they might not tie dollar for dollar to the actual amounts calculated and awarded to the employees in the department. In the case of the Rider EDA department, Rider EDA was charged less than the actual AIP amount distributed to its employees. (ComEd BOE, p. 13)

The result of the Company's argument is that the 36.5% (\$96,000/\$263,000) of the incentive compensation costs recovered through Rider EDA represents the materially correct amount. The remainder (\$167,000) must therefore represent the immaterial

¹ The amount of Staff's adjustment for incentive compensation paid to EE Employees is actually \$262,929. Staff Ex. 1.0, Schedule 1.2, line 16, column C. It is not clear to Staff why ComEd believes the amount to be \$262,923.

difference. It is this immaterial difference with which the Company takes issue. As stated in its BOE:

Second, there is no evidence in the present record regarding where, if at all, the remaining portion (i.e., \$166,782) of the incentive compensation costs may have been recovered. Indeed, no other tariff is at issue in this docket other than Rider EDA. For example, the costs could have been approved in another docket as prudent and reasonable or disallowed. (ComEd BOE, p. 14)

There is no evidence in the record as to where the Company has allocated these costs and through which collection mechanism they have been approved for or denied recovery by the Commission. The reason, for the disallowance of these incentive compensation costs is very specific to the nature of the EE programs and the incremental employees hired to implement them. Any other docketed proceeding would not apply the same standards to these costs and the approval or denial of such costs would be irrelevant to the purposes of the instant proceeding. In addition, Section 8-103 of the Act requires that the costs associated with EE programs be recovered through the Rider and not allocated to other departments for collection through other tariffs.

A utility providing approved energy efficiency and demand-response measures in the State shall be permitted to recover costs of those measures through an automatic adjustment clause tariff filed with and approved by the Commission.

(220 ILCS 5/8-103(e)) The automatic adjustment clause referred to in the statute and approved by the Commission is Rider EDA which states:

...an Energy Efficiency and Demand Response Adjustment (EDA) is computed by the Company each year to recover all Incremental Costs incurred by the Company in association with Energy Efficiency and Demand Response Measures in accordance with the Illinois Commerce Commission (ICC) Order in Docket No. 07-0540 entered February 6, 2008.

(ILL. C.C. No. 10, Original Sheet No. 245)(Staff Motion, Attachment A) The statute and the tariff both clearly indicate that any costs deemed reasonable and prudent by the Commission associated with EE measures are to be collected through Rider EDA. The

burden of proof is on ComEd not Staff to demonstrate that ComEd's Rider EDA charges for the recovery of its incremental EE costs are just and reasonable. (When the "Commission enters upon a hearing concerning the propriety of any proposed rate or other charge, ...In such hearing, the burden of proof to establish the justness and reasonableness of the proposed rates or other charges ... shall be upon the utility." (220 ILCS 5/9-201(c)) The Company's alleged allocation of its AIP costs would be contrary to the statute and the language of Rider EDA and would result in a complex shell game in which the review process would become untenable. The incentive compensation costs associated with the incremental EE employees should be disallowed for recovery in its entirety since ComEd has failed to meet its burden of proof.

B. Annual Reporting of Budget to Actual Comparison

ComEd argues that Staff in its initial brief "substantially departed from its agreement with ComEd" (ComEd BOE, p. 16) as to Staff witness Hinman's recommendations. ComEd then provides what it calls a "brief summary" which it claims will bring clarity to the issue. In the Company's brief summary it quotes a portion of Ms. Hinmans' rebuttal testimony and the response of its witness Mr. Brandt in his surrebuttal. (Id.) Unfortunately, ComEd's brief summary is incomplete and does not tell the full story. The Company ignores Ms. Hinman's direct testimony on the issue and portions of her rebuttal testimony. Staff witness Hinman recommended that the Commission order the Company to: (1) provide in its Annual Rider EDA Report a comparison of its EE Plan Year budgets versus actual EE expenditures by program-level and portfolio-level cost categories consistent with that presented in its energy efficiency Plan approved by the Commission; (2) consistently and accurately classify,

track, and report EE expenditures in its Rider EDA Annual Report by cost categories consistent with those proposed in the Company's energy efficiency Plan; (3) provide invoices and supporting documentation for any requested cost category by EE program and it should substantiate that these expenses were reasonably and prudently incurred in future Rider EDA reconciliation proceedings; and (4) include in its direct testimony in Rider EDA reconciliation proceedings justification for significant shifts in expenditures in comparison to those forecasted in its approved energy efficiency Plan. ComEd's argument with regard to recommendations (2), (3) and (4)² is without merit in that ComEd ignores both the direct and rebuttal testimony of Ms. Hinman where she discussed recommendations (2), (3) and (4). (Staff Ex. 2.0, pp. 7 and 13; Staff Ex. 4.0, pp. 4 and 6)³ If ComEd was going to take issue with Ms. Hinman's recommendations (2), (3), and (4), ComEd should have stated so in its rebuttal or surrebuttal testimony which it did not.

With respect to Ms. Hinman's recommendations (2), (3) and (4), similar to the first recommendation which the Company does not contest, there is nothing burdensome in requiring the Company to provide the information requested by Ms. Hinman. Ms. Hinman's recommendations clearly are related to Rider EDA proceedings and were intended by her to help ensure that the Commission would have the necessary information to evaluate ComEd's expenditures in future Rider EDA proceedings. Given that the Company has failed to offer any testimony on these three recommendations and contrary to the Company's claim, there is evidence in the record

² There is no dispute between Staff and ComEd regarding recommendation (1). (Staff BOE, p. 4)

³ Recommendations (2) and (3) were addressed both in the direct and rebuttal testimony of Ms. Hinman while recommendation (4) was addressed in Ms. Hinman's rebuttal testimony.

on recommendations (2), (3) and (4) in Ms. Hinman's testimony, the weight of the evidence supports a finding by the Commission adopting Ms. Hinman's recommendations (2), (3) and (4) and the Company's exception should be rejected.

C. Technical Corrections

The Company proposes a number of technical corrections in Exception 3. Staff does not object to any of those technical corrections.

III. CONCLUSION

Staff respectfully requests that the Illinois Commerce Commission approve Staff's recommendations in this docket.

Respectfully submitted,

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